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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,762	10/22/2003	Bo Runcman	018798-164	6021
21839	7590	08/29/2006	EXAMINER	
BUCHANAN, INGERSOLL & ROONEY PC POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404			OGDEN JR, NECHOLUS	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 08/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/689,762

Applicant(s)

RUNEMAN ET AL.

Examiner

Necholus Ogden

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25, 27 and 28 is/are pending in the application.
- 4a) Of the above claim(s) 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 20 is/are rejected.
- 7) ☒ Claim(s) 19, 21-25 and 27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Response to Amendment

Claim Rejections - 35 USC § 102

1. Claims 1-18 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Brusk et al (2003/0143262).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Brusk et al disclose a hygiene tissue to be used for cleaning and caring of the skin and the urogenital area, simultaneously delivers lactic acid producing bacteria suspended in a liquid lipid and optionally additional components (see abstract). Brusk et al further teach that said lactic acid producing bacterial is delivered via absorbent articles, such as sanitary napkins, panty liners and tampons (pages 1-2, 0014) and said bacteria is of the species *Lactobacillus plantarum* 931 (0042). Brusk et al teach that said lipid includes petroleum, synthetic and animal and plant derived lipids (0043, 0054-0056). With respect to the additional components they include absorbent agents, weak or inorganic acids such as lactic acid; perfumes, antioxidants, inorganic salts such as calcium chloride, surfactants such as anionic, nonionic surfactants; and steroids (0044-0046). The number of probiotic bacteria on the hygiene tissue is preferably 10^4 to 10^{11} .

Art Unit: 1751

colony-forming units. With respect to the water activity, Brusk et al teach that the bacterial preparation is about 0.30 or less (0048). See examples and claims.

As this reference teaches all of the instantly required it is considered anticipatory.

Double Patenting

1. Claims 1-18 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-9 and 11-22 of copending Application No. 10/318,165.

Applicant argues that the claims of 10/318,165 do not claim a cleaning part and a bacteria part on two separate parts of the cleansing tissue.

The examiner contends that it would have been obvious to formulate the hygiene tissue comprising the bacteria part and the cleansing part would have been located on two separate parts because the claims state the compositions as being impregnated in the tissue.

Allowable Subject Matter

2. Claims 19, 21-25, 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

3. Applicant's arguments filed 6-19-2006 have been fully considered but they are not persuasive.

Applicant argues that Brusk et al do not teach or suggest a cleansing tissue with a cleansing liquid on a separate part from a bacterial composition.

Art Unit: 1751

The examiner contend and respectfully disagrees because Brusk et al suggest that said tissue is impregnated with a suspension for cleansing and maintaining a healthy microbial flora on the skin (0046). The tissue of Brusk et al would inherently comprise a cleansing part and/or a bacterial part on separate parts of the tissue because said parts of either a cleansing or bacteria would be on different sides or different regions of the tissue.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

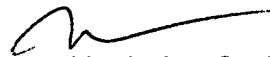
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholus Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-T, Th-Fri.

Art Unit: 1751

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Necholus Ogden
Primary Examiner
Art Unit 1751

No
8-24-2006